IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.147 OF 2005
IN
SUMMARY SUIT NO.3268 OF 2003

Barkur D. Shetty ....Plaintiff
V/s.
Sun Polytron Industries Ltd. ....Defendant

Mr.O.S. Kutty i/b Mr.B.S. Shetty for the Plaintiff.
Ms.Rekha Tavade i/b M.V. Kini & Co. for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH OCTOBER, 2005.

P.C. :

1. The suit is filed to recover the price of the goods sold and delivered by the Plaintiff to the Defendant on the terms and conditions contained in and/or evidenced by the suit invoices. The claim in respect of the first invoice is time barred and the Plaintiff has excluded the same.

2. Three defences have been raised. All of them are without any substance. It is submitted that the claim is barred by limitation. That submission was on the erroneous presumption that the suit was filed on 14th October, 2003. As a matter of fact, it was filed on 26th September, 2003. The defence is therefore

without any substance.

3. It was submitted that this Court has no jurisdiction. However, by an order dated 26th April, 2003, leave under Clause XII of Letters Patent has been obtained by the plaintiff. No application to revoke that leave has been made to date. In any event, there is no dispute that the payments were recoverable at Mumbai and the Defendant had placed its purchase orders at Mumbai. Leave was therefore not liable to be revoked either. This Court has therefore, jurisdiction.

4. The last defence is that the goods were defective in quality. The goods were however utilized and not returned by the Defendant. Thus there is no defence to the suit.

5. In the circumstances, the Summons for Judgment is made absolute and the suit is decreed as prayed with costs.

. Refund as per rules.